

ence between this case and those cases is that the present claimant was given judgment on certain items set out in its petition on which it had rendered bills for transportation of officers' baggage at full rates after the judgment of the Court of Claims in the *Chicago, Milwaukee & St. Paul Ry. Company case*, February 8, 1915 (50 C. Cls. 412). All of its bills prior to that date were rendered under circumstances in all respects similar to those rendered by the other railroads, and the claims for additional payments thereon were rejected by the Court of Claims for the same reasons.

The only additional argument advanced in this case to those advanced in the *Oregon-Washington Railroad & Navigation Company case* is that, as the shipments were not of property of the United States, the railroad was prohibited by law from receiving for its transportation anything less than the full published tariff rate.

ARGUMENT.

I.

The Government submits without repetition the argument on its behalf filed in No. 134, the *Oregon-Washington Railroad & Navigation Company v. The United States*. That argument applies with equal force to the facts in the present case.

In addition to the argument there advanced it is suggested that the *Western Pacific Railroad*

Company, the present claimant, like the *Oregon-Washington Railroad & Navigation Company*, is not a land-grant railroad, but is a party to the equalization agreement. As pointed out in the latter case, it is clear that at the time of becoming a party ^{to} ~~of~~ this agreement claimant knew that the shipments in question were being carried by all of the railroads at land-grant rates; that is, that such shipments were regarded by both the railroads and the Government as "property moved by the Quartermaster Corps, United States Army, and for which the United States Government is lawfully entitled to reduced ²² rates over land-grant roads." (Equalization Agreement, Finding V, R. 10.) There can be no doubt as to the intention of the parties to this agreement.

The grant to the *Northern Pacific Railroad Company* (act of July 2, 1864, Chap. CCXVII, 13 Stat. 365, sec. 11, p. 370), provides:

SEC. 11. *And be it further enacted*, That said Northern Pacific Railroad, or any part thereof, shall be a post route and a military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

A similar provision is contained in the grant to the *Atlantic & Pacific Railroad Company* (act of July 27, 1866, Chap. CCLXXVIII, 14 Stat. 292,

sec. 11, p. 297). There are other acts containing the same provision. See footnote to *United States v. Union Pacific Railroad Company* (249 U. S. 354).

It will be noted that the equalization agreement does not refer specifically to any one or class of land-grant acts. Therefore, in view of the uniform practice as to shipments of this character, and the fact that such shipments undoubtedly constitute "Government service," as used in the acts last referred to, the payment for which is expressly regulated and restricted by Congress in all the appropriation acts, is not the application of land-grant rates to such shipments fully covered by law and by the equalization agreement?

II.

As to the contention made that the Interstate Commerce act made any other than the published rate unlawful, and therefore that even if the claimant did agree to accept shipments at less than such rate, the difference between the rate which it agreed to accept and did accept and the published rate can now be recovered, section 22 of the Interstate Commerce act should be sufficient answer. This section (act of Feb. 4, 1887, chap. 105, 24 Stat. 387, as amended by the act of Mar. 2, 1889, chap. 382, 25 Stat. 855, 862) provides:

SEC. 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the

United States, State, or municipal governments * * *.

Conference Ruling of the Interstate Commerce Commission No. 33, under date of February 3, 1908, is as follows:

33. *Reduced Rate Transportation for Federal, State, and Municipal Governments.*—Under section 22 of the act to regulate commerce, carriers may grant reduced rates for the transportation of property for the United States or for State or municipal governments, under arrangements made directly with such government and in which no contractor or other third person intervenes, without filing or posting the schedule of such rates with the commission. (See Rulings 36, 65, 208-c, 218, 244, and 311.)

(Conference Rulings Bulletin No. 6, Interstate Commerce Commission, Apr. 1, 1913.)

The other rulings referred to are all to the same effect. Neither the act nor the ruling is directed at property which is absolutely owned by the United States, but does specifically apply to property shipped by or for the United States. This fully covers the transportation furnished by claimant.

CONCLUSION.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

FRANK DAVIS, JR.,
Assistant Attorney General.